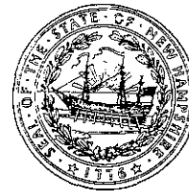




State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3503 FAX (603) 271-2867



PLEASE NOTE: Effective September 1, 2003, the street address is 29 Hazen Drive.

George C. Skoolicas  
90 Calef Highway  
Rochester, New Hampshire 03839

Re: George's Diesel  
Route 125, Barrington, NH

**NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
AND HEARING  
AF 03-028**

October 3, 2003

**I. INTRODUCTION**

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division ("the Division") to George Skoolicas pursuant to RSA 146-A:11-c. The Division is proposing that fines totaling \$9,300 be imposed against George Skoolicas for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. PARTIES**

1. The Department of Environmental Services, Waste Management Division, is an administrative agency of the State of New Hampshire, having in its principal office at 29 Hazen Drive, Concord, NH.
2. George C. Skoolicas is an individual having a mailing address of 90 Calef Highway, Rochester, New Hampshire, who has filed permits with Division in the name of George's Diesel which is not a registered trade name with the New Hampshire Secretary of State's Office.

**III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIM**

1. RSA 146-A authorizes Department of Environmental Services ("DES") to minimize contamination of the waters and land of the state due to improper storage and handling of petroleum by establishing requirements for the operation of aboveground petroleum storage facilities. Pursuant to RSA 146-A:11-c, the Commissioner of DES has adopted NH Administrative Rules Env-Wm 1402 to implement this program.
2. RSA 146-A:15 authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-A, including any rule adopted pursuant thereto. Pursuant to RSA 146-C:15, the Commissioner of DES has adopted Env-C 615 to establish the schedule of fines for such violations relating to aboveground storage tanks.
3. RSA 125-C authorizes the Department of Environmental Services ("DES") to regulate sources of air pollution. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted NH Admin. Rules Env-A 100 *et. seq.*

4. RSA 125-C:15, I-b(b) authorizes the Commissioner to impose administrative fines of up to \$2,000 per offense for violations of any rule adopted pursuant to RSA 125-C.
5. George C. Skoolicas owns and operates George's Diesel located at Route 125, Barrington, NH, including one 13-year-old 20,000-gallon diesel and two 7-year-old 10,000-gallon gasoline aboveground petroleum storage tanks ("AST systems"), and further identified by the DES site number 199706033 and the AST identification number 970633A ("the Facility").
6. Env-A 1205.19 and 1205.20 require gasoline-dispensing facilities in Hillsborough, Merrimack, Rockingham and Strafford counties that meet certain throughput criteria to install a California Air Resources Board ("CARB") certified Stage II vapor recovery system.
7. The Facility, located in Strafford County, New Hampshire, meets the throughput requirements specified in Env-A 1205.19.
8. The AST systems at the Facility are subject to the requirements of NH Administrative Rules Env-Wm 1402.
9. Env-Wm 1402.30 requires that the owner shall prepare and implement a Spill Prevention, Control, and Countermeasure Plan ("SPCC Plan") which shall be a written document establishing release prevention and response procedures for releases from the AST Systems. The SPCC Plan shall be prepared in accordance with 40 CFR Part 112.
10. The Facility does not have an SPCC Plan.
11. Env-Wm 1402.35(c) requires that all existing AST systems shall contain the markings described in Env-Wm 1402.18(e) within 3 years of the effective date of this part.
12. Part Env-Wm 1402 became effective on April 25, 1997.
13. The AST systems are not marked with the appropriate national fire rating system symbol as established by NFPA-704, Identification of Fire Hazards and Materials, and are not marked with the safe fill height of the tank which corresponds to the height at which the high level alarm is activated pursuant to Env-Wm 1402.18(e)(2 and 4).
14. DES notified Mr. Skoolicas of the deficiencies identified in Paragraph III.9. and III.13. above in a letter dated September 12, 2002. The September 12, 2002 letter allowed 45-days to correct the noted deficiencies in order to avoid enforcement action. The 45-day deadline was October 28, 2002.
15. DES notified Mr. Skoolicas in a letter dated May 9, 2003 that DES would initiate administrative fine proceedings in 30 days for each marking standard that is not met and for the SPCC Plan if not prepared or implemented.

16. To date, Mr. Skoolicas has been unresponsive to DES in regards to the requirements specified in the DES letters identified in Paragraph III.10. and III.11. above.

#### IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES

1. Mr. Skoolicas has violated Env-Wm 1402.30 by failing to prepare and implement a SPCC Plan prepared in accordance with 40 CFR Part 112. The Division has determined that Violation 1 is a major deviation from the requirements with moderate potential for harm. Env-C 615.05(b) specifies a fine of \$2,000 per 3-calendar-month period or portion thereof that the plan is not prepared or implemented, as applicable, after the deadline specified in writing by DES. For the 7.5-calender-month period between October 28, 2002 and June 13, 2003, the Division is seeking a fine of \$5,000.

2. Mr. Skoolicas has violated Env-Wm 1402.35(c) by failing to mark the AST systems with the appropriate national fire rating system symbol as established by NFPA-704, Identification of Fire Hazards and Materials, and with the safe fill height of the tank which corresponds to the height at which the high level alarm is activated pursuant to Env-Wm 1402.18(e)(2 and 4), for a total of 6 marking violations. For The Division has determined that Violation 2 is a major deviation from the requirements with moderate potential for harm. Env-C 615.03(c) specifies a fine of \$500 for each standard that is not met per tank. For the 6 violations noted above, the Division is seeking a fine of \$3,000.

3. Mr. Skoolicas Stop has violated Env-A 1205.24(a)(2) by failing to re-test the Stage II vapor recovery system within 90 days prior to the expiration date of the Certificate. The Division has determined that Violation 3 is a major deviation from the requirements with moderate potential for harm. RSA 125-C:15,I-b(b) specifies a fine range of between \$1,251 and \$1,750. The Division is seeking a fine of \$1,300 for this violation.

**The total fine being sought is \$9,300.**

#### V. HEARING, REQUIRED RESPONSE

You have the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, December 8, 2003 at 9:00 a.m.** in **Room C-110** of the DES offices at **29 Hazen Drive** in Concord, NH. **Pursuant to Env-C 601.06, you are required to respond to this notice.** Please respond **no later than November 8, 2003**, using the enclosed colored form as follows:

1. If you plan to attend the hearing, please sign the appearance (upper portion) and return it to the DES Legal Unit, as noted on the form.

2. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

3. If you wish to discuss the possibility of settling the case, please sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate your interest in settling.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

**If you wish to have a hearing but are unable to attend as scheduled**, you must notify the DES Legal Unit at least one week in advance of the hearing and request that the hearing be rescheduled. If you do not notify the DES Legal Unit in advance and do not attend the hearing, the hearing will be conducted in your absence in accordance with Env C 204.09.

#### **VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES**

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Mr. Skoolicas committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the things sought to be proved is true.

If the Division proves that Mr. Skoolicas committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

Pursuant to Env-C 601.09, the fine will be **reduced by 10%** for each of the circumstances listed below **that Mr. Skoolicas proves, by a preponderance of the evidence**, applies in this case:

The violation was a one-time or non-continuing violation, **and** Mr. Skoolicas did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Mr. Skoolicas did not benefit financially, whether directly or indirectly, from the violation.

At the time the violation was committed, Mr. Skoolicas was making a good faith effort to comply with the requirement that was violated.

Mr. Skoolicas has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.

Other information exists which is favorable to Mr. Skoolicas's case, which was not known to the Division at the time the fine was proposed.

\*\*\*\*\***IMPORTANT NOTICE**\*\*\*\*\*

**An administrative fine hearing is a formal hearing.** Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Mr. Skoolicas committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Mr. Skoolicas's opportunity to present testimony to present testimony and evidence that Mr. Skoolicas did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Mr. Skoolicas has any evidence, such as photographs, business records or other documents, that Mr. Skoolicas believes show that Mr. Skoolicas did not commit the violation(s) or that otherwise supports Mr. Skoolicas position, Mr. Skoolicas should bring the evidence to the hearing. Mr. Skoolicas may also bring witnesses (other people) to the hearing to testify on Mr. Skoolicas's behalf.

If Mr. Skoolicas wishes to have an informal meeting to discuss the issues, Mr. Skoolicas must contact the DES Legal Unit at (603) 271-6330 to request a prehearing conference.

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Information regarding this proposed fine may be made available to the public via the DES Web page ([www.state.nh.us.des](http://www.state.nh.us.des)). If Mr. Skoolicas has any questions about this matter, please contact the DES Legal Unit at (603) 271-6330.

**COPY**  
Philip J. O'Brien, P.E., Director  
Waste Management Division

cc: Gretchen Rule, DES Legal Unit  
Susan Alexant, DES Hearings and Rules Attorney  
L. Woodard, DES  
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R. Kurowski, US EPA  
Town of Barrington  
File